



UNITED STATES PATENT AND TRADEMARK OFFICE

UNDER SECRETARY OF COMMERCE FOR INTELLECTUAL PROPERTY AND  
DIRECTOR OF THE UNITED STATES PATENT AND TRADEMARK OFFICE  
WASHINGTON, D.C. 20231  
www.uspto.gov

APR 11 2003

Paper No. 33

In re Application of :  
Randall A. Addington *et al* : DECISION ON PETITION  
Application No. 09/396,530 :  
Filed: September 15, 1999 :  
Attorney Docket No. 99-1002 :

This is a decision on the petition filed by facsimile transmission requesting withdrawal of the holding that this application stands abandoned for failure to file a proper reply to the final rejection dated June 24, 2002. In addition, petitioner also requests the return of certain appeal fees. No fee is required for the petition.

The petition is granted.

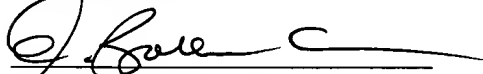
Petitioner alleges that the holding of abandonment is in error because petitioner filed, by facsimile transmission on September 3, 2002, a notice of appeal, an appeal brief in triplicate, the requisite fees, and a petition requesting return of those fees. In support of this allegation, petitioner has included copies of the papers, and a copy of a facsimile auto-reply receipt for the papers showing that they were in fact filed on September 3, 2002.

With respect to the request for refund of the appeal fee, the fee for filing the brief, and waiver of the oral hearing fee, it is noted that MPEP § 1208.02 indicates that petitioner does not in fact have to pay these fees a second time. However, Office financial records do not indicate that these fees were ever received. Accordingly, no refund of these fees will be made at this time. In the event that petitioner is in fact charged for these fees, then petitioner may request a refund, attaching a copy of this decision.

On the other hand, Office financial records also show that petitioner has not received a refund of a \$130.00 petition fee paid on February 19, 2002, or a refund of a second \$130.00 petition fee paid on July 8, 2002. Neither of those petition fees were required, and a refund of those fees will be scheduled.

Based upon the showing described above, it is clear that this application was not in fact abandoned. Accordingly, the Notice of Abandonment is hereby vacated, the holding of abandonment is withdrawn, and the application is restored to pending status. The application is being forwarded to the Head Supervisory Applications Examiner to carry out the refunds discussed in the immediately preceding paragraph. Thereafter, the application will be forwarded to the examiner, via the Supervisory Patent Examiner, for action on the appeal brief filed on September 3, 2002.

PETITION GRANTED.

  
E. Rollins-Cross, Director, Patent  
Examining Groups 3710 and 3720

Joel I. Rosenblatt  
445 11TH Avenue  
Inidalantic, FL 32903